

63-1326

U. S. DEPARTMENT OF LABOR
OFFICE OF THE SECRETARY
WASHINGTON

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GC 63-0524

CIA HISTORICAL REVIEW PROGRAM
RELEASE IN FULL 1995

FEB 14 1963

Honorable John A. McCone
Director of Central Intelligence
Central Intelligence Agency
Washington 25, D. C.

Dear Mr. McCone:

On August 28, 1962, we forwarded for your comments a copy of our tentative Rules for the Nomination of Arbitrators to make advisory determinations or decisions in certain cases involving the exclusive representation of Federal employees by employee organizations. As you know, these nominations are made upon the request of an agency or an employee organization which has been accorded or qualifies for formal recognition subject to such rules as the Secretary may subscribe.

We are enclosing herewith a copy of the proposed rules as revised to meet certain objections of agencies and employee organizations and some of the problems already experienced under the tentative rules.

We have been advised by the Comptroller General that the services of arbitrators under Section 11 are nonpersonal and that those services should be procured by contracts specifying the rates of compensation and other conditions under which their nonpersonal services will be engaged. In the interest of uniformity we have provided in the rules that the fees for arbitrators be \$100 a day. We have also provided that per diem and travel expenses be paid in accordance with maximums allowed for Government employees. We enclose a recommended standard contract for arbitration which your agency may wish to use in these matters.

Since there are already a number of pending cases under Section 11, I would appreciate receiving any comments you may have concerning these regulations by March 10, 1963.

Yours sincerely,

W. Willard Wirtz
Secretary of Labor

Enclosures

CONTRACT FOR ARBITRATION

Agency _____

Case _____

Docket Number _____

FOR AGENCY USE ONLY	
Contract No. _____	
Appropriation Chargeable _____	
Signature of Approving Official _____	
Title _____	
Bureau or Office _____	
Date Approved _____	

1. Agreement.

In consideration of the promise of _____, hereinafter the Contractor, to accomplish the object set forth in paragraph 2, _____, hereinafter the Agency, agrees to pay, subject to the General Provisions set forth on page 2, the contract sum set forth in paragraph 3.

2. Object.

The object of this contract is _____. ((a), (b) or both (a) and (b)).

(a) An advisory decision as to the appropriateness of a unit for purposes of exclusive recognition and the following related issues: _____

(b) An advisory determination either through conducting or supervising an election or otherwise of whether an employee organization represents the majority of the employees in a unit.

The Contractor shall be solely responsible for the accomplishment of the object and shall not be subject to any supervision.

3. Contract Sum.

The contract sum of this contract is \$100.00 per day plus per diem of \$16.00 per day and travel expenses in accordance with the Standardized Government Travel Regulations. This sum shall be payable in a lump sum following completion of the object unless otherwise specified in paragraph 5.

4. Arbitration Facilities.

The Contractor may use agency facilities in the accomplishment of the object of this contract to the extent that such facilities are necessary and available.

5. Special Provisions.

Contracting Officer

Title

Contractor

Date

Mailing Address

GENERAL PROVISIONS

1. No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.
2. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
3. The Contractor agrees that the Comptroller General of the United States or any of his duly authorized representatives, and any duly authorized representative of the U. S. Department of Labor, shall, until the expiration of three years after final payment under this contract, have access to and the right to examine any directly pertinent books, documents, papers, and records of the Contractor involving matters related to this contract.

PROPOSED RULES FOR THE NOMINATION OF ARBITRATORS
UNDER SECTION 11 OF EXECUTIVE ORDER 10988

Section 1. Purpose and Scope. These procedures govern the nomination of arbitrators by the Secretary to perform the advisory functions specified under Section 11 of Executive Order 10988. Any arbitrators so nominated will be available for either or both of the following purposes:

(a) to investigate the facts and issue an advisory decision with respect to the appropriateness of a unit of Federal employees for the purpose of exclusive recognition and as to related issues submitted for consideration; or

(b) to determine and advise whether an employee organization represents a majority of employees in an appropriate unit by conducting or supervising an election, wherein a majority of those voting, provided there is a representative vote, cast their ballots for or against representation, or by other appropriate means. A request for a nomination will be considered as contemplating the performance of functions within the above categories if it specifies as a purpose obtaining an advisory decision on one or more questions involved in a unit determination or determination of majority status, such as an advisory decision on the eligibility of voters, the right to appear on the ballot, arising in connection with an election to be held or on a question relating to the conduct of an election already held which could not reasonably have been made the subject of a prior request.

Subject to compliance with those procedures, the Secretary will nominate an arbitrator whenever he is so requested by an agency or by an employee organization which is seeking recognition as the exclusive representative of Federal employees in a *prima facie* appropriate unit and which has either been accorded formal recognition or meets all the prerequisites for such recognition.

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Section 2. Definitions. When used in these procedures,

- (a) "Order" means Executive Order No. 10988;
- (b) "Agency," "employee organization," and "employee" have the same meaning as in the Order;
- (c) "Recognition" means recognition which is or may be accorded to an employee organization pursuant to the provisions of the Order;
- (d) "Secretary" means the Secretary of Labor.

Section 3. Requests for Nominations of Arbitrators: Filing, Disputes, Parties, Time.

(a) Requests for nominations should be filed only where there exists a dispute or problem which cannot more appropriately be resolved through regular agency procedures. Parties are, therefore, expected to eliminate from their requests matters not necessary to the resolution of such dispute or problem and to use their best efforts to secure agreement on as many issues as possible before making the request.

(b) Requests for nominations may be filed either by an agency, or by an employee organization as described in section 1, or jointly by an agency and one or more employee organizations. Joint requests are encouraged.

(c) Subject to the provisions of subsection (a) of this section, a request for nomination may be filed by an employee organization, after an appropriate determination by the agency, or responsible officials thereof, of the matter or matters in dispute.

The Secretary will entertain on its merits a request by an employee organization for nomination of an arbitrator which is made within 30 days after an agency's final unit determination, or within 10 days after the parties' failure to reach agreement with respect to majority representation, whichever

is later, except that a request by an employee organization for the nomination of an arbitrator will be entertained after the above periods provided no other employee organization has qualified for and received exclusive recognition after adequate notice to any interested employee organization whose representation interest has been disclosed to the agency.

(d) No request contemplating an advisory determination as to whether an employee organization should become or continue to be recognized as the exclusive representative of employees in any unit will be entertained if the request is filed within 12 months after a prior determination of exclusive status has been made pursuant to the Order with respect to such unit unless the agency has withdrawn exclusive recognition from an employee organization by reason of its failure to maintain its compliance with sections 2 and 3(c) of the Order or the Standards of Conduct for Employee Organizations and Code of Fair Labor Practices and the agency advises the Secretary that it has no objection to a new determination of exclusive representation being made within the 12-month period.

Section 4. Contents of Requests; Service on Other Parties; Answer; Intervention.

(a) Requests for nominations shall be in triplicate and contain the following information:

- (1) The name of the agency and the name and address of any office or branch of the agency below the national level that may be involved;
- (2) A description of the unit appropriate for exclusive representation or claimed to be appropriate for such representation.

(3) The number of employees in the appropriate unit or any alleged appropriate unit;

(4) If the request is by an employee organization, the name, affiliation, if any, and address of the organization and the names, if known, of all other employee organizations claiming exclusive recognition, or seeking or having attained formal or informal recognition with respect to any of the employees in the unit involved;

(5) If the request is by an agency, the names, affiliation, if any, and addresses of the employee organization or organizations claiming exclusive recognition and, if known, of any employee organization seeking or having attained formal or informal recognition with respect to any of the employees in the unit involved;

(6) A brief statement indicating specifically the matter or matters with respect to which an advisory decision or determination is sought;

(7) A brief statement of procedures followed by and before the agency prior to the request, three copies of any appropriate agency determination and three copies of all correspondence relating to the dispute or problem;

(8) If the request is made by an employee organization, an indication of the interest of such organization, including, in the case of an organization making an initial request not connected with a prior agency or employee organization request, information or data such as membership lists, employee petitions or dues records showing prima facie that the organization has sufficient membership to qualify for formal recognition, and that it represents no less than 30 percent of the employees, in the appropriate unit or alleged appropriate unit; and

(9) Any other relevant facts.

(b) A party making a request shall furnish copies to all other parties or organizations listed in the request in compliance with subsection (a); except that membership lists, employee petitions or dues records need not be furnished by the requesting employee organization to the other parties or organizations.

(c) Any employee organization claiming to have an interest in the matter or matters to be considered by an arbitrator as to the appropriateness of a unit or majority representation must have satisfied all of the requirements of section 5 of the Order and section 4(a)(8) of these rules; except that, any employee organization which has satisfied all of the requirements of section 5 of the Order except for the 10 percent membership requirement shall be entitled to receive notice of the proceeding and to participate fully therein if it represents at least one member and/or is designated by at least one employee as his representative in the unit alleged to be appropriate by the employee organization seeking exclusive recognition or the unit alleged to be appropriate by the agency, provided, however, that such intervening employee organization may not contend for a unit different than that sought by the employee organization seeking exclusive recognition or the unit claimed to be appropriate by the agency.

(d) Within fifteen (15) days following the receipt of a copy of any request for a nomination filed with the Secretary, the agency or any employee organization may file a response thereto with the Secretary, raising any matter which is relevant to the request including the adequacy of the showing of interest and the appropriateness of the unit under terms of the Order or these procedures. A copy of any response shall be furnished to other parties and organizations listed in the request, in the manner pro-

vided in subsection (b).

Section 5. Action to be taken by the Secretary; Nomination and Selection.

(a) Upon receipt of a request and the responses, if any, the Secretary shall make such further inquiries as may be necessary to determine his authority under the Order and these procedures; whether a timely request for nomination has been made; whether a valid question concerning representation exists in a prima facie appropriate unit; or for the purpose of obtaining a further specification of the issues or matters to be submitted for an advisory decision or determination, or assisting or advising the persons nominated or considered for nomination or otherwise facilitating submission of the matter to such person or persons in a manner that will permit an expeditious decision or determination.

(b) The Secretary will determine the adequacy of the showing of interest administratively, and such determination shall not be subject to collateral attack at a hearing before an arbitrator.

(c) The Secretary shall nominate not less than three arbitrators. Within 5 days the parties may indicate their order of preference from among those nominated. The Secretary will thereafter select from among the nominees listed an arbitrator, or a panel of arbitrators, if he determines that a panel would be more appropriate.

Section 6. Time, Additional Time after Service by Mail

(a) In computing any period of time prescribed or allowed by these rules, the date of the act, event, or default after which the designated period of time begins to run, is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a Federal legal holiday, in which event the period

runs until the end of the next day, which is neither a Saturday, Sunday nor a Federal legal holiday. When the period of time prescribed, or allowed, is less than 7 days, intermediate Saturdays, Sundays and holidays shall be excluded from the computations. Whenever a party has the right or is required to do some act or take some other proceedings within a prescribed period after service of a notice or other paper upon the Secretary or a party and the notice is served upon him by mail, 3 days shall be added to the prescribed period: Provided, however, that 3 days shall not be added if any extension of such time may have been granted.

(b) When these rules require the filing of any paper, such document must be received by the Secretary or a party before the close of business of the last day of the time limit, if any, for such filing or extension of time that may have been granted.

Section 7. Fees; Costs; Expenses; Decisions.

Arbitrator's fees, per diem and travel expenses, and election expenses for notices, ballots, postage, rentals, etc., shall be borne entirely by the agency.

The standard fee for the services of an arbitrator should be \$100 per day. In the event a panel of arbitrators is employed, the standard fee should be multiplied by the number of persons serving on the panel. Travel and per diem should be paid in accordance with maximums allowed by law and the Standardized Government Travel Regulations for employees of the Federal Government.

The agency should provide the arbitrator with a copy of the transcript of testimony taken at the hearing, such transcript to be returned to the agency upon the issuance of the arbitrator's advisory decision.

Costs involving assistance rendered by the Secretary's Office in connection with advisory decisions or determinations under Section 11 of the Order shall be limited to per diem, travel expenses and services on a time-worked basis.

Upon request, the Secretary will make available copies of advisory decisions of arbitrators.

Section 8. Construction of Rules.

The rules shall be liberally construed to effectuate the purposes and provisions of the Order.

Approved For Release 2002/07/29 : CIA RDP80B01676R002900060002-5
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CENTRAL INTELLIGENCE AGENCY
OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	DD/S	2/18	RWT
2	General Counsel		
3		KNL	
4		JL	
5			RTA 2/19/63 rec'd 25 Feb 63
6			
<input checked="" type="checkbox"/> ACTION		DIRECT REPLY	PREPARE REPLY
APPROVAL		DISPATCH	RECOMMENDATION
COMMENT		FILE	RETURN
CONCURRENCE		INFORMATION	SIGNATURE

Remarks:

1 - 2: With the attached letter from Mr. Wirtz, dated 14 February 1963, I am forwarding the file of previous related correspondence. This suggests that there may be no necessity for action. The Director of Personnel can give you further information if you wish it concerning the Agency's exemption from Executive Order 10988.

RBF

Suspense: 4 March 1963

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
Executive Director	15 Feb 63
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CENTRAL INTELLIGENCE AGENCY
OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	DD/S	9/15	W/KM
2	D/Personnel	9/14	EDC/LC
3	Mr. [redacted] 7D24 HQ A	9/17	R/H
4	[redacted]		
5			
6			
ACTION	DIRECT REPLY	PREPARE REPLY	
APPROVAL	DISPATCH	RECOMMENDATION	
COMMENT	FILE	RETURN	
CONCURRENCE	INFORMATION	SIGNATURE	

Remarks:

For your information and for preparation
of an appropriate reply for General Carter's
signature as Acting Director.

Suspense to DD/S : 10 Sept.
R/H

SUSPENSE: 11 September 1962

Mr. [redacted]

Returned per your request.

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FROM: NAME, ADDRESS AND PHONE NO.	DATE
	9/4/62
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